

This letter discusses how a printer can satisfy his SOT liability. (This is a GIL.)

September 19, 2006

Dear Xxxxx:

This letter is in response to your letter dated June 1, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

In your letter you have stated and made inquiry as follows:

We are the representative of the taxpayer noted above. Enclosed please find a properly executed form IL-2848 for your records.

Pursuant to the Illinois Administrative Code (2 ILAC 1200.110), we are requesting a private letter ruling affirming the taxpayer's interpretation and application of the rules, regulations and procedures issued by the Illinois Department of Revenue (IDOR) as they relate to the application of the retailer's occupation tax (ROT) and the service occupation tax (SOT).

The taxpayer is engaged in the business of printing custom and/or personalized printed materials (i.e. business cards, letterhead, envelopes, etc.) for its customers. A listing of material facts and circumstances is provided below:

- The taxpayer is engaged in the trade of providing custom-printed material to its customers. This custom-printed material has no commercial value to persons other than the original purchaser.
- On occasion, the taxpayer sells blank stock (i.e. blank letterhead stock) to its customers.
- One hundred percent of the actual printing is contracted out to third party printers (secondary servicemen). The taxpayer has no printing capabilities. The secondary servicemen do not separate the cost of ink and paper to the taxpayer.

- The secondary servicemen are large commercial printers and are registered with IDOR.
- The taxpayer's customers do not know that the printing is provided by third party printers.
- The taxpayer is registered with IDOR.

Based upon our research and interpretation of the regulations and law, we believe that the following positions with regard to the ROT and SOT are proper as they apply to the taxpayer:

- Sellers of custom printed material that has no commercial value to any party other than the original purchaser are subject to the SOT.
- As the separate selling price of tangible personal property used in the production of the custom-printed material is not provided by the secondary servicemen and as the taxpayer does not wish to disclose the purchase price to the customer, the taxpayer uses fifty percent (50%) of the total sales price of the items subject to the SOT as the tax base for computing the SOT.
- The taxpayer provides certificates of resale to its secondary servicemen.
- The taxpayer taxes blank paper stock and other tangible, non-custom, personal property subject to the ROT.

We are requesting this ruling for the tax periods beginning January of 2005 through the date of this request. There are no current litigation or audit issues pending.

To the best of our and the taxpayer's knowledge, IDOR has not previously ruled on this or a similar issue. The only guidance that we were able to locate was GIL ST 96-0299 (A copy is enclosed for your reference) that generically addressed similar facts and circumstances. We are requesting a private letter ruling on these facts and circumstances.

We were unable to locate any authoritative guidance contrary to our position. Please contact us with any questions regarding the information contained herein.

We look forward to receiving your private letter ruling at your earliest convenience. Thank you for your time and attention to this matter.

DEPARTMENT'S RESPONSE

The nature of your inquiry and the information you have provided require that we respond with a GIL. We think that your questions are sufficiently answered in the Department's rules and regulations.

The Department's regulation "Personalizing Tangible Personal Property" at 86 Ill. Adm. Code 130.1995 provides guidance regarding when Retailers' Occupation Tax is applicable and when Service Occupation Tax is applicable. Section 130.1995(b) provides that "[s]ellers of personalized business calling cards, greeting cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur Retailers' Occupation Tax liability on their receipts from such sales because they are primarily engaged in a service occupation in producing or procuring such items, which have no commercial value for their customers."

Servicemen have several options for paying Service Occupation Tax or Use Tax. Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

The final method of determining tax liability may be used by de minimis servicemen not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen do not have the option of determining whether they are de minimis using a transaction-by-transaction basis. See 86 Ill. Adm. Code 140.109.

When a secondary serviceman is involved, and the primary serviceman and the secondary servicemen are both registered, and the secondary serviceman does not provide the separate selling price used in the production of the custom printed materials to the primary serviceman, and the primary serviceman is required to be registered because he also makes sales at retail, the primary serviceman has two options for paying tax.

If the primary serviceman does not wish to separately state the selling price of the tangible personal property transferred, the serviceman may use the second method above and base tax on 50% of the entire bill to the service customer. If the serviceman qualifies as de minimis, (i.e. his annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of his annual gross receipts from service transactions or 75% in the case of a pharmacist or person engaged in graphic arts production, see 86 Ill. Adm. Code 140.101(f)), he also has the option to pay Service Occupation Tax based upon the cost price of tangible personal property transferred incident to sales of service.

Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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